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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 MICHAEL K. TURNBOW, ) CASE NO. C04-2510-JCC-MAT  
09 Plaintiff, )  
10 v. ) REPORT AND RECOMMENDATION  
11 JOSEPH LEHMAN, et al., )  
12 Defendants. )  
13

14 INTRODUCTION AND SUMMARY CONCLUSION

15 Plaintiff is a state prisoner who is currently incarcerated at the Monroe Correctional  
16 Complex (“MCC”), Twin Rivers Unit (“TRU”). He brings this action under 42 U.S.C. § 1983 to  
17 allege that defendants violated his First and Fourteenth Amendment rights when they denied him  
18 his religiously mandated diet. Plaintiff identifies the following individuals as defendants in this  
19 action: Joseph Lehman, Secretary of the Department of Corrections (“DOC”); Dan Williams,  
20 Religious Program Manager for the DOC; and Mark Kucza, Associate Superintendent of MCC.  
21 Plaintiff seeks injunctive relief and damages.

22 Defendants have filed a motion for summary judgment. Plaintiff has filed a brief in

01 opposition to defendants' motion, and defendants have filed a reply brief in support of their  
02 motion. This Court, having reviewed defendants' motion, and the balance of the record,  
03 concludes that defendants' motion for summary judgment should be granted and plaintiff's  
04 complaint, and this action, should be dismissed with prejudice.

#### 05 FACTS

06 Plaintiff is a Muslim inmate who has been incarcerated at the MCC-TRU since March  
07 2000. (Dkt. No. 16, Ex. 1.) Prior to 2002, Muslim inmates were provided with a non-pork diet.  
08 (*Id.*, Ex. 4 at 1.) The non-pork diet was one of 14 different diets provided by the DOC to  
09 accommodate a variety of religious and medical needs. (*Id.*) In 2002, the mainline diet was made  
10 pork-free, and the 14 diet plans were consolidated into six plans that effectively met the religious  
11 and medical needs of all inmates. (*Id.*, Ex. 4 at 1-2.)

12 In July 2004, the DOC provided Kosher diets to Muslim inmates at TRU for a short period  
13 of time. (*See* Dkt. No. 7 at 3; Dkt. No. 16, Ex. 2 at 3.) However, that practice was stopped  
14 because it greatly increased food costs and, according to the DOC, was not necessary to meet the  
15 nutritional and religious requirements of Muslim inmates. (Dkt. No. 16, Ex. 2 at 3.) Thereafter,  
16 an ovo-lacto vegetarian diet was authorized for Muslim inmates. (*Id.*) Defendants contend that  
17 the ovo-lacto vegetarian meals are nutritionally adequate and meet the religious requirements for  
18 Muslims. (*See id.*) Plaintiff contends that the non-meat diet violates Muslim religious practices  
19 and is discriminatory. (Dkt. No. 7 at 3.)

#### 20 DISCUSSION

21 Plaintiff alleges in his complaint that defendants violated his rights under the First  
22 Amendment when they denied him his religious diet and then, contrary to Muslim dietary

01 requirements, substituted an ovo-lacto vegetarian diet. Plaintiff further alleges that defendants'  
02 decision to deny him a proper religious diet was motivated by racial and religious animus and  
03 therefore violated his rights under the Fourteenth Amendment.

#### 04 Summary Judgment

05 Summary judgment is proper only where "the pleadings, depositions, answers to  
06 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
07 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter  
08 of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the absence of  
09 a genuine issue of fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). And,  
10 the Court is required to draw all inferences in a light most favorable to the non-moving party. *Id.*  
11 at 248. Genuine disputes are those for which the evidence is such that a "reasonable jury could  
12 return a verdict for the nonmoving party." *Id.* Material facts are those which might affect the  
13 outcome of the suit under governing law. *Id.*

14 Defendants argue in their motion for summary judgment that all claims against defendant  
15 Lehman should be dismissed for failure to allege personal participation. Defendants further argue  
16 that plaintiff has not stated valid First Amendment and Equal Protection claims. Finally,  
17 defendants argue that they are entitled to qualified immunity. Because this Court concludes that  
18 plaintiff has not established the violation of any federal constitutional right, this Court will limit  
19 its discussion to merits of plaintiff's First and Fourteenth Amendment claims.

#### 20 First Amendment Violation

21 Plaintiff alleges that his First Amendment right to free exercise of his religion was violated  
22 when he was first denied a Muslim religious diet and, subsequently, when an ovo-lacto vegetarian

01 diet was substituted for a Muslim religious diet. Plaintiff contends that the ovo-lacto vegetarian  
02 diet is contrary to Muslim dietary requirements. More specifically, plaintiff complains that the diet  
03 does not include meat and therefore violates Muslim religious practice.

04 In order to establish a free exercise violation, a plaintiff “must show that officials burdened  
05 the practice of his religion, by preventing him from engaging in conduct mandated by his faith,  
06 without any justification reasonably related to legitimate penological interests.” *Freeman v.*  
07 *Arpaio*, 125 F.3d 732, 736 (9th Cir. 1997)(citing *Turner v. Safely*, 482 U.S. 78, 89 (1987)). As  
08 the Ninth Circuit explained in *Freeman*, “[i]n order to reach the level of a constitutional violation,  
09 the interference with one’s practice of religion ‘must be more than an inconvenience; the burden  
10 must be substantial and an interference with a tenet or belief that is central to religious doctrine.’”  
11 *Id.* at 737 (quoting *Graham v. C.I.R.*, 822 F.2d 844, 851 (9th Cir. 1987)).

12 Defendants, in support of their motion for summary judgment, have submitted evidence  
13 which demonstrates that the ovo-lacto vegetarian diet is sufficient to meet the requirements of  
14 Islam. First, defendant Williams has submitted a declaration in which he states that he asked the  
15 DOC’s Islam advisor, Ismail Ahmad, about the sufficiency of ovo-lacto vegetarian meals to meet  
16 the requirements of Islam and was advised that the consumption of Halal, Kosher, or vegetarian  
17 diets would be sufficient under Islam. (Dkt. No. 16, Ex. 2.)

18 In addition, defendants have submitted the declaration of Brannon Wheeler, a  
19 Distinguished Professor of History and Politics, and Director of the Center for Middle East and  
20 Islamic Studies at the United States Naval Academy. (*Id.*, Ex. 3.) Mr. Wheeler has a Ph.D. in  
21 Islamic Studies from the University of Chicago with specialization in Islamic law and Comparative  
22 Religion. (*Id.*) In his declaration, Mr. Wheeler provides a detailed explanation of dietary

01 regulations under Muslim law and summarizes those regulations as follows:

02 Islamic law does not require the eating of meat as a condition of being Muslim, and  
03 the consumption of a vegetarian diet is considered more pious than the eating of a  
04 meat diet. Specific foods are prohibited to be eaten by Muslims, and Islamic law  
05 stipulates certain rules for the slaughtering of those animals the meat of which may  
06 be eaten. Islamic law also recommends that certain types of animals be slaughtered  
and eaten communally by Muslim families at the two annual holidays of Id al-Adha  
and Id al-Fitr but limits this ritual to those families headed by free individuals able to  
afford the purchase of the given animal.

07 (Dkt. No. 16, Ex. 3 at 11-12.)

08 Plaintiff, in his brief in opposition to defendants' motion, directs the Court's attention to  
09 excerpts from the Qur'an, the holy book of Islam, some of which refer to the eating of meat.

10 (Dkt. No. 20.) Plaintiff asserts that these references to the eating of meat establish that Muslim  
11 inmates are obligated to eat meat as a part of their diet. However, none of the passages identified  
12 by plaintiff appear to mandate the eating of meat and, in fact, they appear to be entirely consistent  
13 with defendants' evidence. Defendants do not dispute that Muslim inmates are permitted by their  
14 religion to eat certain meats, they argue only that meat is not required in order to meet the  
15 religious requirements for Muslims. Plaintiff offers no evidence to the contrary. As plaintiff  
16 makes no showing that defendants burdened the practice of plaintiff's religion by preventing him  
17 from engaging in conduct mandated by his faith, defendants are entitled to summary judgment with  
18 respect to plaintiff's First Amendment claim.

19 Equal Protection

20 Plaintiff also alleges that his Fourteenth Amendment right to equal protection was violated  
21 by defendants' conduct. Plaintiff asserts that he, and others of his faith, are primarily people of  
22 color and that defendants' actions are "overtly discriminatory" because they affect people of a

01 protected class. Plaintiff further asserts that Muslims are members of a protected class and are  
02 treated differently from members of other religions, such as the Jewish religion, who are permitted  
03 appropriate religious diets.

04 In order to state an equal protection claim under § 1983, a plaintiff must show that the  
05 defendants acted with an intent or purpose to discriminate against the plaintiff based upon  
06 membership in a protected class. *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

07 The Court first notes that plaintiff's argument that his right to equal protection was  
08 violated because individuals who adhere to the Muslim religion are primarily people of color is  
09 meritless. The record makes clear that plaintiff is not a person of color but is, in fact, white, and  
10 of non-hispanic origin. Plaintiff therefore is not a member of the protected class he identifies in  
11 his first argument.

12 As to the remainder of his equal protection arguments, plaintiff fails to demonstrate that  
13 defendants acted with any discriminatory intent or purpose in designating the ovo-lacto vegetarian  
14 diet as the diet to be provided to Muslim inmates. Defendants have offered evidence in support  
15 of their motion for summary judgment which demonstrates that the decision to offer Muslim  
16 inmates an ovo-lacto vegetarian diet was motivated by efficiency and cost considerations and not  
17 by an intent to discriminate. Cheryl Johnson, Food Service Program Manager for the DOC, has  
18 submitted a declaration in support of defendants' motion for summary judgment in which she  
19 states that the Kosher meals which are provided to Jewish inmates, and which were temporarily  
20 provided to Muslim inmates at TRU, must be prepared in a separate kitchen with separate utensils  
21 and are therefore prepared off-site and brought to the institution. (Dkt. No. 16, Ex. 4 at 2.) Ms.  
22 Johnson states that these Kosher meals cost two to three times as much as "mainline" meals such

01 as the ovo-lacto vegetarian meals. (*Id.*) Ms. Johnson also states that provision of special meals  
02 increases demands on staff and decreases the efficiency of food preparation. (*Id.*) Plaintiff offers  
03 nothing to refute this evidence.

04 Moreover, plaintiff offers no evidence that defendants permit religious diets for Jewish  
05 inmates and for other religions, while denying the same to Muslim inmates. As explained above,  
06 defendants have provided evidence that the ovo-lacto vegetarian diet is sufficient under Islam.  
07 Thus, it cannot be said that defendants are denying plaintiff a religious diet. The fact that the diet  
08 designated for Muslim inmates does not contain meat, does not alter the fact that plaintiff is being  
09 provided with a diet which is apparently sufficient to sustain him in good health and which satisfies  
10 the dietary laws of his religion.

11 As plaintiff makes no showing that defendants have violated his right to equal protection,  
12 defendants are entitled to summary judgment with respect to plaintiff's Fourteenth Amendment  
13 claim as well.

#### 14 CONCLUSION

15 For the reasons set forth above, this Court recommends that defendants' motion for  
16 summary judgment be granted and that plaintiff's complaint and this action be dismissed with  
17 prejudice. A proposed order accompanies this Report and Recommendation.

18 DATED this 2nd day of November, 2005.

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20 Mary Alice Theiler  
21 United States Magistrate Judge  
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